



July 18, 1996

FHWA Docket No. MC-96-18
Federal Highway Administration
Office of Chief Counsel
HCC-10
Room 4232
400 Seventh St., SW
Washington, D.C. 20590

QA-20676

FHWA-97-2299-54

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ADMINISTRATION
LEGS./REGS. DIV.

Dear Sir/Madam:

Re: D.O.T. Proposed Rules and changes to (49 CFR 361, 362, 364, 385, 386, and 391)

Southern Company Services is pleased to present comments on the proposed additions and amendments to 49 CFR Parts 361, 362, 364, 385, 386 and 391 being considered by the Federal Highway Administration. Southern Company Services provides financial and engineering services to the five electric utility companies of the Southern Company. Southern Company Services principal operations are in Alabama, Florida, Georgia, and Mississippi.

Although some of the stated purposes of these proposals seem to be in line with the regulatory amendments suggested, such as, the consolidation of existing administrative review procedures, Alabama Power Company would like to offer comments on other proposed changes. The proposed expanded authority of the Department of Transportation to do on site investigations and inspections would not increase efficiency, would cause duplication of regulatory control, would confuse existing procedures, and delay current due processes as explained herein. In the past, the stated responsibility of the Occupational Safety and Health Administration (OSHA) has been workplace safety and health compliance actions and the Federal Highway Administration's (FHWA) responsibility has been for compliance actions related to traffic and materials on our nation's highways. One of the stated purposes of the additions and amendments is to increase the efficiency of the compliance practices. The provisions being added to the authority of the Department of Transportation to inspect "any place of business, property, equipment, or commercial motor vehicle," greatly increases the authority of the Federal Highway Administration. This expanded authority would only add confusion and duplication of federal regulatory control throughout general industry. In 29 CFR 1903.3, Authority for Inspection, it is stated "Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay...workplace or environment where work is performed...to inspect and investigate...any such place of employment, and all pertinent conditions, structures, machines, equipment and materials therein; to question privately any employer, owner, operator, agent, or employee; and to review records required by the Act and regulations published in this chapter,

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and other records that are directly related to the purpose of the inspection.” As proposed, it is conceivable that a serious accident at an industrial site, such as involving a hazardous material, could trigger an inspection by both the Department of Labor and the Department of Transportation. The authority to enter and inspect places of business is already delegated to OSHA and Alabama Power Company believes that this responsibility should not be duplicated.

Additionally, on site investigations of vehicles would cause disruption, render little information about vehicle and/or company compliance, and have little or no impact on public safety. A company could argue that vehicles found out of compliance within company property were in for repair or maintenance and would not be driven until in compliance. However, the work disruption caused by the inspection would be costly.

Finally, the subjectivity involved with the determination of safety ratings needs to be revisited. Without some objective criteria, it will be very difficult to ensure consistency of enforcement, and will be difficult for companies to do any productive periodic self-assessments relative to “safety management controls.”

Southern Company Services appreciates the opportunity to submit these comments, and hopes FHWA will give them due consideration.

Sincerely,



Kenneth L. Roberts
Manager-Safety and Health

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